

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

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4
5 BERT MEYER,

6 Plaintiff,

7 vs.

No. 1:04cv00049JMS-BMK

8 MATSON NAVIGATION COMPANY,
9 INC.,

10 Defendant.

11 Deposition of

12 ROBERT E. RILEY

13 Thursday, August 25, 2005

14 **CERTIFIED**
15 **COPY**

16
17
18
19
20
21 REPORTED BY: MARY DUTRA, CSR #9251

22
23 NOGARA REPORTING SERVICE
24 130 Battery Street, Suite 580
25 San Francisco, California 94111
(415) 398-1889

I N D E X

| | | |
|---|-----------------------------------|-------------|
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| 3 | | Page Number |
| 4 | EXAMINATION BY MR. LACY | 5 |
| 5 | Afternoon Session | |
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E X H I B I T S

| | | |
|----|--|----|
| 10 | Defendant's | |
| 11 | 1 Invoice No. B.M. 1-2003 from Captain | 9 |
| 12 | Robert E. Riley to Law Offices of. | |
| | Preston Easley | |
| 13 | 2 Document entitled "Bert Meyer v. | 18 |
| 14 | Matson Navigation Co., Inc., and | |
| 15 | Pacific Livestock, Inc., Revised | |
| 16 | Report of Captain Robert E. Riley, | |
| | June 22, 2005," with photocopies of | |
| | photographs attached | |
| 17 | 3 Expert Disclosure; Certificate of | 23 |
| 18 | Service from John R. Lacy, with | |
| | attached documents | |
| 19 | 4 Presentation of Qualifications of | 23 |
| | Robert E. Riley | |
| 20 | 5 Photocopy of photograph | 59 |
| 21 | 6 Document headed "Recorded | 92 |
| 22 | Statement" | |
| 23 | 7 Document headed "Bert Meyer | 92 |
| | Deposition August 31, 2004" | |
| 24 | 8 Document headed "Depo-Keahi Birch | 92 |
| 25 | November 9, 2004" | |

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| 9 Document headed "Depo Daniel Farney August 11, 2004" | 92 |
| 10 Handwritten diagram | 92 |
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| 12 Accident Report, Matson Terminals, Inc., for Bert Meyer | 127 |
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1 BE IT REMEMBERED that, pursuant to Notice of
2 Taking Deposition and Subpoena Duces Tecum and on
3 Thursday, the 25th day of August, 2005, commencing at
4 the hour of 9:37 o'clock a.m. thereof, at the Offices
5 of NOGARA REPORTING SERVICE, 130 Battery Street,
6 Suite 580, San Francisco, California, before me, MARY
7 DUTRA, a Certified Shorthand Reporter in and for the
8 State of California, personally appeared

9 ROBERT E. RILEY,
10 called as a witness by the Defendant, having been by
11 me first duly sworn, was examined and testified as
12 hereinafter set forth.

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14 APPEARANCES OF COUNSEL

15 For the Plaintiff
16 LAW OFFICES OF PRESTON EASLEY
17 2500 Via Cabrillo Marina
Suite 106
18 San Pedro, California 90731-7724
(310) 832-5315
By: PRESTON EASLEY, Attorney at Law

19 For the Defendant
20 GOODSILL ANDERSON QUINN & STIFEL, LLP
21 Alii Place, Suite 1800
1099 Alakea Street
Honolulu, Hawaii 96813
(808) 547-5600
22 By: JOHN R. LACY, Attorney at Law, and

23 BARBARA A. BODAGER, Assistant General Counsel
24 MATSON NAVIGATION COMPANY
555 12th Street
Oakland, California 94607
25 (510) 628-4584

1 head, have you actually discussed it with anyone?

2 A. I think I mentioned it one time to Preston.

3 I'm not sure.

4 Q. Have you ever discussed it with a naval
5 architect?

6 A. No.

7 Q. Going on, in No. 1 you conclude that, quote,
8 "Both the gap and the animal waste created an
9 unreasonably dangerous condition for an expert and
10 experienced longshoreman," unquote. And I guess we've
11 covered the gap.

12 What "animal waste" are you specifically
13 identifying?

14 A. In my belief, the animal waste as described
15 including some, let's say, slimy -- slimy waste as
16 opposed to, let's say, lumps of feces. And in that
17 situation I believe it was maybe hard to see. So the
18 combination of the gap and the animal waste, it was --
19 you know, I don't want to read it, but it's a
20 dangerous situation.

21 Q. If Mr. Meyer had not had animal waste as you
22 describe it on the sole of his shoe, would his foot
23 have slipped on the padeye?

24 A. I don't know.

25 Q. Did his foot slip on the padeye because of

1 the animal waste?

2 A. ~~I don't know that either~~ ^{YES, ACCORDING TO MEYER.} Q

3 Q. Do you know what caused his foot to slip?

4 A. ~~No.~~ ANIMAL WASTE, ACCORDING TO MEYER. Q

5 Q. Now, finally you say, "The gap on the LIHUE
6 does not allow longshoremen to safely perform their
7 work," end of quote.

8 What do you mean by that?

9 A. It's much too large a gap up there where
10 people are walking, working, some of at which time
11 they have to look above them to do their job. And I
12 feel that with that hazard there, it doesn't allow
13 longshoremen to safely perform their work because
14 almost at any time their foot could slip into the gap.

15 Q. With regard to the portside where you
16 measured it at 4 inches, in your opinion is that an
17 acceptable gap for the LIHUE so far as landing the
18 hatch cover?

19 A. No.

20 Q. All right.

21 A. It's still too wide.

22 Q. At what point would you find the gap
23 acceptable?

24 A. I feel the gap, say between the grating and
25 anything else, should be no bigger than the holes, if

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1 A. That's my understanding, yes.

2 Q. Okay. And how did you get that
3 understanding?

4 A. From Bert Meyer's description of there being
5 slime all over everywhere or whatever he said.

6 Q. Based on your experience in having hauled
7 livestock, other than wash down are there any other
8 ways to clean up, you know, animal waste and slime?

9 A. I mean, you know, depending on the amount
10 and depending on the surface that it's adhering to,
11 you might be able to shovel it up, scoop it up.

12 Q. Did you form any opinion one way or the
13 other as to the type of waste that was on the LIHUE
14 back in October of 2002 when Mr. Meyer was injured,
15 whether it was the type of waste that can be shoveled
16 or scooped up?

17 A. I formed the opinion that there was some
18 lumps, clumps, hunks of solid animal feces that could
19 have been, say, picked up. But the slime, which is a
20 combination of urine and feces, really, really -- it
21 would be difficult to shovel; you couldn't shovel it
22 up.

23 Q. So that would be a washdown?

24 A. It would be a washdown, yes.

25 Q. What about some type of nonslip stuff like

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1 you'd throw on oil or something like that?

2 A. I think that might have made the situation
3 better, but I really don't think that it would have
4 corrected it. Certainly not corrected it like a
5 washdown would have.

6 Q. Have you ever had an occasion where you'd
7 had a longshoreman, while you were working at the
8 Marine Terminals, who had either slipped or fallen
9 down because of animal waste?

10 A. I don't think so.

11 MR. LACY: That's all the questions that I
12 have, Captain Riley. Thank you.

13 MR. EASLEY: Let's go off the record for a
14 second.

15 (Discussion off the record.)

16 MR. EASLEY: Okay. We can go back on the
17 record. I will purchase a certified copy of the
18 transcript. I will make it available to the witness
19 to sign and correct under penalty of perjury, and I
20 will provide copies of the signature page and any
21 changes to the court reporter and opposing counsel
22 within 45 days of when the transcript arrives at my
23 San Pedro office.

24 Is that so stipulated?

25 MR. LACY: So stipulated, with the

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1 understanding you're going to try to get it to me
2 sooner.

3 MR. EASLEY: Right. I'll try to get it
4 sooner. Okay. We're off the record.

5 (Whereupon, the deposition concluded at
6 3:52 o'clock p.m.)

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 10-12-05
ROBERT E. RILEY

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